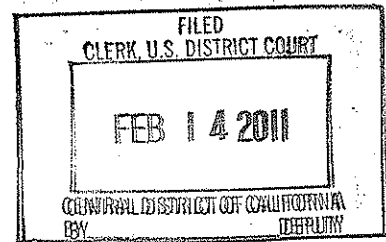


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MIKE RUTTI, GERSON ANAYA,

Plaintiffs,

vs.

LOJACK CORPORATION, INC., and
Does 1-50, inclusive,

Defendants.

No. **CV 11-01372** DDP(JLX)
NOTICE OF REMOVAL

Los Angeles County Superior Court
No. BC381043

1 To the Clerk of Court, plaintiffs Mike Rutti and Anaya Gerson, and plaintiffs'
2 attorneys of record:

3 PLEASE TAKE NOTICE that defendant LoJack Corporation ("LoJack") hereby
4 removes this action from the Superior Court of California in and for the County of Los
5 Angeles (the "Superior Court") to this Court, based on diversity-of-citizenship
6 jurisdiction under 28 U.S.C. sections 1332 (as amended by the Class Action Fairness
7 Act of 2005 ("CAFA"), Pub. L. 109-2, § 4(a), 119 Stat. 9), and 1441(a) and (b), and, in
8 support of removal, alleges as follows:

9 **Procedural Background**

10 1. On April 5, 2006, plaintiff Mike Rutti commenced a civil action in this
11 Court entitled "*Mike Rutti v. LoJack Corporation, Inc.*," No. SACV06-350 DOC
12 (RNBx) ("*Rutti I*"). A true copy of the complaint in *Rutti I* is attached to the
13 Declaration of Daniel Chammas in Support of Notice of Removal ("Chammas
14 Declaration") as Exhibit A. *Rutti I* remains pending before this Court.

15 2. On August 16, 2007, this Court issued its order granting in part and
16 denying in part LoJack's motion for partial summary judgment in *Rutti I*. The order
17 disposed of all federal claims. A true copy of the Court's summary judgment order is
18 attached to the Chammas Declaration as Exhibit B.

19 3. On October 2, 2007, the Court issued an order dismissing the remaining
20 state law claims for lack of subject matter jurisdiction. A true copy of the Court's
21 dismissal order is attached to the Chammas Declaration as Exhibit C.

22 4. On November 20, 2007, plaintiffs Rutti and Gerson Anaya commenced a
23 civil action in the Superior Court entitled "*Mike Rutti, Gerson Anaya v. LoJack*
24 *Corporation, Inc., and Does 1-50, inclusive*," No. BC381043 ("*Rutti II*"). A true copy
25 of the complaint plaintiffs filed in *Rutti II* is attached to the Chammas Declaration as
26 Exhibit 1.

27 5. *Rutti II* is pleaded as a class action and asserts seven causes of action for
28 (1) failure to provide meal periods and accurate wage statements, (2) failure to provide

1 rest periods and accurate wage statements, (3) failure to indemnify employees,
2 (4) failure to pay minimum wage, (5) failure to make payments within the required
3 time, (6) unlawful, unfair and fraudulent business practices in violation of California
4 Business and Professions Code section 17200 *et seq.*, and (7) penalties under the
5 California Labor Code Private Attorneys General Act of 2004 ("PAGA"). The
6 allegations in the complaint are incorporated into this notice by this reference without
7 necessarily admitting the truth of any of them.

8 6. On January 2, 2008, LoJack removed *Rutti II* to this Court.

9 7. On June 4, 2008, this Court remanded *Rutti II* back to the Superior Court.
10 At that time, plaintiffs in their complaint disavowed that the amount in controversy,
11 exclusive of interest and costs, exceeded \$5 million. Cmplt., ¶ 1. Without any evidence
12 from plaintiffs and their witnesses about the amount in controversy, the Court ruled that
13 LoJack had not met its burden of proving the amount in controversy exceeds \$5 million.
14 A true copy of the Court's remand order is attached to the Chammas Declaration as
15 Exhibit D.

16 8. On September 24, 2009, the Superior Court in *Rutti II* granted certification
17 of plaintiffs' proposed class with respect to plaintiffs' claims for (1) missed meal and
18 rest periods; (2) failure to indemnify for purchased tools; (3) failure to pay proper
19 overtime rate on any hours over 8 in a day; (4) failure to pay overtime rate on any hours
20 over 8 in a day; (5) failure to pay wages for (a) on-call time, (b) time washing and
21 maintaining company vehicles, (c) portable data terminal ("PDT") transmission time,
22 (d) time charting routes to plaintiffs' first job sites, (e) time to travel and pick up
23 supplies from UPS, and (f) time to purchase business related tools; and (6) waiting-time
24 penalties, (7) violations of the California Unfair Competition Law, and (8) penalties
25 pursuant to the California Labor Code Private Attorneys General Act. A true copy of
26 the Superior Court's certification order is attached to the Chammas Declaration as
27 Exhibit 58.

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1 9. On November 18, 2010, plaintiff Rutti amended his complaint in *Rutti I* to
2 add plaintiffs Jason White and Eshon Mitchell.

3 10. On January 19, 2011, LoJack received the following documents from
4 plaintiffs in *Rutti II*: Plaintiff Gerson Anaya's Supplemental Responses to Request for
5 Admissions, Set One; Plaintiff Gerson Anaya's Supplemental Responses to Special
6 Interrogatories, Set One; Plaintiff Mike Rutti's Supplemental Responses to Request for
7 Admissions, Set One; Plaintiff Mike Rutti's Supplemental Responses to Special
8 Interrogatories, Set One (collectively, the "Supplemental Discovery Responses"). In
9 the Supplemental Discovery Responses, plaintiffs describe for the first time in writing
10 their methodology for calculating the damages they claim. In addition, in the
11 Supplemental Discovery Responses plaintiffs for the first time in writing abandoned
12 their intention, expressed in their complaint (¶ 1), to limit their recoverable damages to
13 \$5 million or less. True copies of the Supplemental Discovery Responses are attached
14 to the Chammas Declaration as Exhibits E-H.

15 **Removal Jurisdiction under CAFA**

16 11. This Action is one over which this Court has original jurisdiction under the
17 provisions of 28 U.S.C. section 1332, as amended by CAFA, and may be removed to
18 this Court pursuant to 28 U.S.C. sections 1441(a) and (b), on the following grounds:

19 12. CAFA provides that a putative class action is removable to federal court if
20 (a) the proposed class members number at least 100; (b) the amount in controversy
21 exceeds \$5 million, exclusive of interest and costs; (c) and any member of a class of
22 plaintiffs is a citizen of a state different from any defendant. *See* 28 U.S.C. § 1332(d).
23 Each of these requirements is met in this action.

24 **The Citizenship of the Parties Is Diverse**

25 13. LoJack is informed and believes that, at the time this Action was
26 commenced, plaintiffs were citizens of the State of California within the meaning of 28
27 U.S.C. section 1332(a). *See* Cmplt., ¶ 2 ("Plaintiffs Mike Rutti and Gerson Anaya are
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1 California residents and natural persons and were hourly employees of LoJack
2 Corporation holding the position of technician.”).

3 14. Most, if not all, of the class members are citizens of the State of California.
4 See Cmplt., ¶ 10 (defining class to include non-exempt technicians and senior
5 technicians who work or worked for LoJack in the State of California).

6 15. LoJack is now, and was at the time this Action was commenced, a citizen
7 of a state other than the State of California within the meaning of 28 U.S.C. section
8 1332(c)(1) because LoJack is now, and was at the time the Action was commenced, a
9 corporation organized under the laws of the Commonwealth of Massachusetts with its
10 principal place of business in the Commonwealth of Massachusetts. Declaration of
11 Jeannine Giardina in Support of Notice of Removal (“Giardina Decl.”), ¶ 3. The
12 majority of LoJack’s executive and administrative functions are performed, and the
13 majority of LoJack’s executive and administrative officers are located in, the
14 Commonwealth of Massachusetts. *Id.* See *Hertz Corp. v. Friend*, 130 S. Ct. 1181
15 (2010) (adopting “nerve center” test for establishing principal place of business).

16 16. LoJack is the only named defendant in this action and the presence of Doe
17 defendants has no bearing on diversity with respect to removal. See 28 U.S.C.
18 § 1441(a) (“For purposes of removal under this Chapter, the citizenship of defendants
19 sued under a fictitious name shall be disregarded.”). Accordingly, no named defendant
20 is a citizen of California, in which state this Action was filed.

21 **The Proposed Class Members Number at Least 100**

22 17. In the complaint, plaintiffs propose a class that includes “all current and
23 former hourly employees who held the technician and/or senior technician position at
24 LOJACK in the State of California from April 5, 2002 to the present.” Cmplt., ¶ 10.

25 18. From April 5, 2002, to November 20, 2007, LoJack employed at least 200
26 non-exempt technicians and senior technicians in the State of California. Giardina
27 Decl., ¶ 4. From April 5, 2002, to January 31, 2011, LoJack employed at least 200 non-
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1 exempt technicians and senior technicians in the State of California. *Id.* Accordingly,
2 the requirement that the proposed class members number at least 100 is easily met.

3 **The Amount in Controversy Exceeds \$5 Million**

4 19. Plaintiffs included boilerplate language in their complaint that the “total
5 damages for the entire case does not exceed \$5,000,000.” Cmpl’t., ¶ 1.

6 20. However, in their Supplemental Responses, plaintiffs stated for the first
7 time in writing that they “do not agree to place a cap or otherwise limit the damages
8 sought to recover on behalf of the class to \$5 million.” *See* Plaintiff Mike Rutti’s
9 Supplemental Responses to Interrogatory 1-18 (6:5–6:7); Plaintiff Gerson Anaya’s
10 Supplemental Responses to Interrogatory 1-18 (6:5–6:7).

11 21. A plaintiff cannot avoid removal by pleading in bad faith that damages do
12 not exceed the jurisdictional minimum. *Lowdermilk v. United States Bank National*
13 *Assoc.*, 479 F.3d 994, 999 (9th Cir. 2007) (noting “good faith” requirement in pleading
14 amount in controversy); *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1410 (5th Cir. 1995)
15 (“The inquiry, however, does not end merely because the plaintiff alleges damages
16 below the threshold. The face of the plaintiff’s pleading will not control if made in bad
17 faith.”); *Morgan v. Fay*, 471 F.3d 469, 477, n.9 (3rd Cir. 2006) (“We note the potential
18 availability of judicial estoppel arguments by the defendants should the plaintiffs in the
19 future change legal positions in an attempt to achieve an award in excess of
20 \$5 million.”).

21 22. Plaintiffs’ inconsistent positions in the complaint and in the Supplemental
22 Responses about the amount in controversy are the type of gamesmanship that
23 constitutes bad faith. *Lowdermilk*, 479 F.3d at 1002 (“We acknowledge that strict
24 construction of our jurisdiction creates the potential for manipulation of the
25 jurisdictional rules by plaintiffs ‘who may plead for damages below the jurisdictional
26 amount in state court with the knowledge that the claim is actually worth more, but also
27 with the knowledge that they may be able to evade federal jurisdiction by virtue of the
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1 pleading ... Such gamesmanship is possible under our rules, though “[s]uch
2 manipulation is surely characterized as bad faith.”), *citing De Aguilar*, 47 F.3d at 1410.

3 23. When a plaintiff alleges in his complaint that the damages sought do not
4 meet or exceed the jurisdictional minimum, the defendant who seeks to remove the case
5 to federal court has the burden of providing to a legal certainty that the amount in
6 controversy in fact does meet or exceed the jurisdictional minimum. *Lowdermilk*, 479
7 F.3d at 996. However, once a plaintiff abandons the allegation that the damages sought
8 do not meet or exceed the jurisdictional minimum, or it is shown that the allegation was
9 made in bad faith, the defendant’s burden of proof to show the amount in controversy
10 meets or exceeds the jurisdictional minimum drops to preponderance of the evidence.
11 *Id.* at 999, quoting *Abrego v. Dow Chem. Co.*, 443 F.3d 676, 690 (9th Cir. 2006).

12 24. Whether measured by the “legal certainty” standard or the “preponderance
13 of the evidence” standard, LoJack establishes on this notice of removal that the amount
14 in controversy exceeds \$5 million, exclusive of interest and costs. In fact, using the
15 methodology outlined by plaintiffs in their Supplemental Responses, and based on
16 testimony from plaintiffs’ own witnesses, the amount in controversy easily exceeds \$11
17 million. (Of course, in setting forth the amount that plaintiffs have placed in
18 controversy, LoJack does not concede liability or that plaintiffs are entitled to their
19 claimed damages.)

20 25. Courts are not limited to the complaint in determining whether the CAFA
21 amount-in-controversy requirement is satisfied. *See Coleman v. Estes Express Lines,*
22 *Inc.*, No. 10-56852, slip op. at 10 (9th Cir. filed Jan. 25, 2011) (“A district court may
23 also consider evidence in deciding whether CAFA’s \$5,000,000 amount-in-controversy
24 requirement has been satisfied.”). Indeed, when subsequent developments after the
25 complaint is filed establish the requirements for removal, courts routinely consider such
26 evidence. *See, e.g., Campbell v. Vitran Express, Inc.*, 2010 U.S. Dist. Lexis 132071, *4
27 (C.D. Cal., 2010) (“To determine whether the removing defendant has met the more
28 stringent burden of legal certainty, the Court may consider facts in the notice of removal

1 as well as any 'summary-judgment-type evidence relevant to the amount in controversy
 2 at the time of removal.'"), citing *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th
 3 Cir. 2004); *Fletcher v. Toro Co.*, 2009 U.S. Dist. Lexis 126693, *8 (S.D. Cal., 2009)
 4 ("A court may also consider supplemental evidence later proffered by the removing
 5 defendant, which was not originally included in the removal notice."), citing *Cohn v.*
 6 *Petsmart, Inc.*, 281 F.3d 837, 840 n.1 (9th Cir. 2002).

7 26. Plaintiffs' Supplemental Responses identify the categories of damages for
 8 which they are seeking recovery, including: (1) off-the-clock damages for failure to pay
 9 for time spent commuting, transmitting data on PDT devices, mapping routes, on-call,
 10 washing work clothes, washing and maintaining the company vehicle, purchasing and
 11 maintaining work tools and other necessary expenses, and other certified claims such as
 12 failure to pay time spent picking up product at UPS; (2) damages for failure to provide
 13 meal and rest periods; (3) waiting-time penalties under Labor Code Section 203 "for
 14 each formerly employed class member;" (4) "[o]vertime wages for hours worked in
 15 excess of 8 in a day before LoJack began paying daily overtime properly;" and
 16 (5) PAGA penalties. See Plaintiff Mike Rutti's Supplemental Responses to Special
 17 Interrogatories, Set One (4:18-6:2); Plaintiff Gerson Anaya's Supplemental Responses
 18 to Special Interrogatories, Set One (4:18-6:2).

19 27. In their Supplemental Responses, plaintiffs explained for the first time in
 20 writing their methodology for calculating amounts under their categories of claimed
 21 damages. Plaintiffs state that they intend to use witness sampling to calculate the total
 22 amount of damages for the first two categories of damages—i.e., "off-the-clock" and
 23 meal/rest periods. Under their methodology, plaintiffs will solicit information from a
 24 sample of witnesses regarding the amount of time each witness allegedly spends on
 25 "off-the-clock" activities. The result will then be added and multiplied by the
 26 applicable hourly wage rate and then extrapolated to the class. See Plaintiff Mike
 27 Rutti's Supplemental Responses to Special Interrogatories, Set One (4:18-5:27);
 28 Plaintiff Gerson Anaya's Supplemental Responses to Special Interrogatories, Set One

(4:18-5:27). In addition, plaintiffs will ask each representative how many meal and rest periods he or she missed during the class period, and extrapolate the responses to calculate meal and rest period damages. *See* Cal. Lab. Code § 226.7 (assessing per-employee penalty equal to one hour of pay at employee's regular rate of compensation where employer fails to provide employee with compliant meal or rest period.). Plaintiffs also seek waiting-time penalties under Labor Code section 203 "for each formerly employed class member," "[o]vertime wages for hours worked in excess of 8 in a day before LoJack began paying daily overtime properly," and PAGA penalties. *See* Plaintiff Mike Rutti's Supplemental Responses to Interrogatory 1-18 (5:27-6:2); Plaintiff Gerson Anaya's Supplemental Responses to Special Interrogatories, Set One (5:27-6:2).

28. LoJack has carefully reviewed evidence already provided by plaintiffs in connection with *Rutti I* and *Rutti II* with respect to each category of off-the-clock activities for which plaintiffs seek recovery, and with respect to missed meal and rest periods. Specifically, LoJack reviewed every affidavit filed by plaintiffs for California-based putative class members, and deposition transcripts of each California-based witness whom LoJack deposed, and compiled their testimony with respect to the off-the-clock activities alleged. Declaration of Elizabeth J. MacGregor in Support of Notice of Removal ("MacGregor Decl."), ¶¶ 2-6, Exhs. 1-35.

29. Based on this evidence, LoJack calculated the amount of time that each of plaintiffs' witnesses reported spending on each off-the-clock activity, and the frequency that they alleged to have missed their meal and/or rest periods. Declaration of Richard Dent in Support of Notice of Removal ("Dent Decl."), ¶¶ 2-5. In so doing, LoJack took the most conservative approach possible so as to underestimate the alleged damages that plaintiffs are seeking. For example, if a witness testified that on "most days," his commute to work was one hour, it was assumed that the witness's commute was 1 hour on 51 percent of days, and 0 hours on all remaining days. Similarly, if a witness testified that he spent "at least 30-45 minutes" on PDT data transmissions,

1 LoJack assumed the transmissions took 30 minutes. Likewise, if a witness testified that
2 he was unable to take a meal period "on most days," LoJack assumed he missed his
3 meal period on 51 percent of days, and received a meal period on all other days.
4 Ambiguous responses (e.g., "sometimes I missed my meal break") were not used. *Id.*,
5 ¶ 5.

6 30. LoJack then calculated the average time reportedly spent on each "off-the-
7 clock" activity (e.g., commute, PDT, etc.) and summed up the total across the various
8 activities to compute the total average "off-the-clock" time. Dent Decl., ¶ 6. Based on
9 this approach, plaintiffs' witnesses reported spending an average of 3.56 hours on
10 alleged off-the clock activities during the class period. *Id.*, ¶ 6, Exh. A. In addition,
11 plaintiffs' witnesses reported missing their meal periods on 59.9 percent of workdays,
12 and their rest periods on 55.9 percent of workdays. *Id.*, ¶¶ 8-9, Exhs. B-C.

13 31. LoJack then provided this analysis to LoJack's expert, FTI Consulting
14 ("FTI"), to extrapolate these calculations to the entire putative class based on the above
15 methodology. Based on the testimony from plaintiffs' witnesses, FTI calculated
16 \$8,804,855 in damages for alleged off-the-clock time, and \$979,390 and \$1,381,267 in
17 meal and rest period premiums, respectively. Declaration of Michael Buchanan in
18 Support of Notice of Removal ("Buchanan Decl."), ¶ 17. In addition, FTI calculated
19 \$656,887 in alleged waiting-time penalties under California Labor Code section 203 for
20 the 209 class members whose employment terminated during the statutory period. *Id.*,
21 ¶ 16. Adding up these categories of damages, plaintiffs have placed in controversy
22 \$11,822,399, which represents the *bare minimum* damages assuming the veracity of
23 plaintiffs' evidence. *Id.*, ¶ 17.

24 32. The \$11,822,399 was calculated using "straight time" only, Buchanan
25 Decl., ¶ 17, even though, in their Supplemental Responses, plaintiffs claim they are also
26 entitled to "overtime wages for hours worked in excess of 8 in a day." Assuming that
27 only half of the claimed off-the-clock time was time worked in excess of 8 hours in a
28 day, damages would total \$14,023,613. *Id.*

1 33. The \$11,822,399 also does not include additional categories of damages
2 sought for alleged time spent “on call,” unreimbursed work-related expenses and PAGA
3 penalties. Buchanan Decl. ¶¶ 10, 17.

4 34. LoJack anticipates that plaintiffs will challenge LoJack’s use of evidence
5 provided by plaintiffs’ witnesses for calculating the amount in controversy. However,
6 throughout this litigation plaintiffs consistently have taken the position that their
7 witnesses are representative of the class. Accordingly, extrapolating their evidence to
8 the putative class is the best available estimate of the amount in controversy as claimed
9 by plaintiffs.

10 35. Moreover, even if the testimony of plaintiffs’ witnesses was deeply
11 discounted, the amount in controversy still would exceed \$5 million.

12 36. Plaintiffs’ witnesses reported spending an average of 3.56 hours per day on
13 alleged off-the clock activities during the class period and missing meal periods and rest
14 periods on 60 percent 56 percent of workdays, respectively. Dent Decl., ¶¶ 6, 8-9,
15 Exhs. A-C.

16 37. If that testimony were discounted and plaintiffs’ witnesses were viewed as
17 having worked off the clock 67 minutes per day and missed two meal periods and two
18 rest periods per week, the amount in controversy would exceed \$5 million, after
19 factoring in the \$656,887 in alleged waiting-time penalties under California Labor Code
20 section 203 (*see supra*, ¶ 31). Buchanan Decl., ¶ 18.

21 38. Alternatively, if that testimony were discounted and plaintiffs’ witnesses
22 were viewed as having worked off the clock 87 minutes per day and missed one meal
23 period and one rest period per week, the amount in controversy also would exceed \$5
24 million, after factoring in the \$656,887 in alleged waiting-time penalties under
25 California Labor Code section 203 (*see supra*, ¶ 31). Buchanan Decl., ¶ 19.

26 39. Moreover, these calculations exclude any civil penalties under PAGA
27 sought by the class, which as alleged are substantial. *See* Cal. Lab. Code § 2699(f)(2)
28 (defining PAGA damages as “one hundred dollars (\$100) for each aggrieved employee

1 per pay period for the initial violation and two hundred dollars (\$200) for each
2 aggrieved employee per pay period for each subsequent violation.”).

3 40. Based on the foregoing, LoJack has established to a legal certainty or by a
4 preponderance of the evidence that all requirements under CAFA are satisfied and the
5 Action may be removed to this Court on grounds of diversity-of-citizenship jurisdiction.

6 **Procedural Compliance of This Notice of Removal**

7 **There Is No Named Other Defendant Than LoJack**

8 41. As stated above, no defendant other than LoJack is named in the
9 complaint. LoJack is informed and believes that no other defendant has been served
10 with process in the Action.

11 **The Removal Is Timely**

12 42. This notice of removal is effected properly and timely pursuant to 28
13 U.S.C. section 1441(b), because it is filed within 30 days of LoJack’s receipt of the
14 Supplemental Discovery Responses on January 19, 2011, which was the first paper
15 received from plaintiffs evidencing that the amount in controversy exceeds \$5 million,
16 exclusive of interest and costs.

17 43. Even if an action is not initially removable, it may be removed more than
18 30 days after service of the complaint if it is removed within 30 days of the defendant’s
19 receipt of a paper evidencing that it is removable. 28 U.S.C. § 1446(b), *see also*
20 *Carvalho v. Equifax Info. Servs., LLC*, 2010 U.S. App. Lexis 25821, *11 (9th Cir. 2010)
21 (“The second thirty-day removal period is triggered if the initial pleading does not
22 indicate that the case is removable, and the defendant receives ‘a copy of an amended
23 pleading, motion, order or other paper’ from which removability may first be
24 ascertained”); *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006)
25 (“the thirty-day clock doesn’t begin ticking until a defendant receives ‘a copy of an
26 amended pleading, motion, order or other paper’ from which it can be determined that
27 the case is removable”). Furthermore, unlike other actions removed based on diversity-
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1 of-citizenship jurisdiction, if the action is a class action, removal may be effected more
2 than one year after commencement of the action. 28 U.S.C. § 1453(b).

3 44. This Court previously determined that this action was not removable at the
4 time of filing of the complaint because plaintiffs elected to cap their damages at
5 \$5 million. "If [the plaintiff] does not desire to try his case in the federal court he may
6 resort to the expedient of suing for less than the jurisdictional amount, and though he
7 would be justly entitled to more, the defendant cannot remove." *St. Paul Mercury v.*
8 *Red Cab Co.*, 303 U.S. 283, 294 (1938). "Accordingly, subject to a good faith
9 requirement in pleading, a plaintiff may sue for less than the amount she may be
10 entitled to if she wishes to avoid federal jurisdiction and remain in state court."
11 *Lowdermilk v. United States Bank Nat'l Assoc.*, 479 F.3d at 999. *See also id.* (plaintiff
12 has "prerogative, subject to the good faith requirement, to forgo a potentially larger
13 recovery to remain in state court"); Wright, Miller, and Cooper, 14A *Federal Practice*
14 *and Procedure* § 3702 ("Plaintiff is the master of his or her own claim; if plaintiff
15 chooses to ask for less than the jurisdictional amount, only the sum actually demanded
16 is in controversy.").

17 45. Plaintiffs, therefore, specifically and expressly limited the amount of
18 damages they were putting in controversy at the time they filed the complaint.
19 Plaintiffs did not remove that cap until January 19, 2011, when they served the
20 Supplemental Discovery Responses disclosing, for the first time in writing, that they
21 were abandoning the \$5 million limitation on their recovery. Under CAFA, other courts
22 have construed similar allegations in a complaint as a limitation on damages. *See*
23 *Lowdermilk*, 479 F.3d at 996 (where plaintiff alleges that "the aggregate total of the
24 claims pled herein do not exceed five million dollars," plaintiff is "plead[ing]
25 conservatively to secure a state forum," but "defendants [have] an option of a federal
26 forum at the point when they can prove its jurisdiction"); *Lowdermilk v. United States*
27 *Bank Nat'l Assoc.*, 2006 U.S. Dist. LEXIS 95697, *7-8 (D. Ore. 2006) ("[c]oncern that
28 a plaintiff could increase the damages alleged after the limitations period for removal

1 expires” is misplaced because if the plaintiff “attempts to increase the damages sought,
2 the case could then be removed to federal court”); *Yerosushalmi v. Blockbuster, Inc.*,
3 2005 U.S. Dist. LEXIS 39331, *6 (C.D. Cal. 2006); (where plaintiff alleges that
4 “aggregate damages for the named plaintiff and the class she seeks to act as a
5 representative total less than \$5,000,000,” this is “an allegation limiting damages” that
6 plaintiff is seeking); *Castillo v. Romo*, 2009 U.S. Dist. LEXIS 78463, *6 (S.D. Cal.
7 2009) (“plaintiff may sue for less than the amount she may be entitled to if she wishes
8 to avoid federal jurisdiction and remain in state court [and] Plaintiffs have exercised
9 that option” where complaint alleges that “the amount in controversy does not reach or
10 exceed Five Million Dollars,” which “limit[s] their recovery to an amount under
11 \$5,000,000”); *Brooks v. GAF Material Corp.*, 532 F. Supp. 2d 779, 782 (D.S.C. 2008)
12 (granting motion to remand where plaintiff alleges that the “amount in controversy for
13 the entire proposed class does not exceed five million dollars [and] court construes
14 [this] language [as] a purposeful limitation on damages to below the jurisdictional
15 amount”); *Morgan v. Gay*, 471 F.3d 469, 471 (3d. Cir. 2006) (where complaint alleges
16 that “total amount of such monetary relief for the class as whole shall not exceed \$5
17 million,” this is an “express limitation in the complaint” on damages); *Cox v. Allstate*
18 *Ins. Co.*, 2008 U.S. Dist. LEXIS 41272, *6 (W.D. Okl. 2008) (where plaintiffs allege
19 that “the matter in controversy does not in the aggregate exceed the sum or value of
20 \$5,000,000,” this is a sufficient limitation on damages to trigger legal certainty
21 standard); *Blouin v. Shell Oil Co.*, 1993 U.S. Dist. LEXIS 2657, *2-3 (E.D. La. 1993)
22 (motion to remand granted where “Plaintiff has stipulated in its memorandum that the
23 amount in controversy does not exceed \$50,000” because this is a “waiver of any claim
24 to damages in excess of \$50,000”).

25 46. Accordingly, plaintiffs previously successfully limited their damages to
26 avoid a federal forum by alleging that the damages did not exceed \$5 million, an
27 allegation this Court accepted as true.

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1 47. However, on January 19, 2011, in their Supplemental Discovery
 2 Responses, plaintiffs for the first time removed that limitation and stated in writing that
 3 they are seeking damages in excess of \$5 million, exclusive of interest and costs.

4 48. As of January 19, 2011, therefore, this case became removable for the first
 5 time, and LoJack is timely exercising its right to remove by filing this notice of removal
 6 within 30 days after the receipt of the Supplemental Discovery Responses.

7 **Other Procedural Compliance**

8 49. Venue of this Action exists in this District pursuant to 28 U.S.C. section
 9 1441(a) because the Superior Court is located within this District.

10 50. Notice of this removal is being given to plaintiffs and the Superior Court
 11 pursuant to 28 U.S.C. section 1446(d).

12 51. Besides the papers previously identified in the Chammas Declaration as
 13 Exhibits A-H and Exhibits 1 and 58, the Chammas Declaration attaches the balance of
 14 the process, pleadings, and orders served upon LoJack in *Rutti II* as Exhibits 2-57 and
 15 59-80.

16 For all the foregoing reasons, this action may be removed to this Court.

17 Dated: February 14, 2011.

DAN CHAMMAS
 VENABLE LLP

JEFFREY D. WOHL
 MICHELE A. FREEDENTHAL
 NOAM GLICK
 PAUL, HASTINGS, JANOFSKY &
 WALKER LLP

22 By: _____



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 Attorneys for Defendant
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FILED
LOS ANGELES SUPERIOR COURT

NOV 20 2007

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BY RUGENA LOPEZ, DEPUTY

*D304
Victoria
Chavez*

11 SUPERIOR COURT OF CALIFORNIA
12 CITY AND COUNTY OF LOS ANGELES

13 MIKE RUTTI, GERSON ANAYA,

14 Plaintiffs,

15 vs.

16 LOJACK CORPORATION, INC., and DOES

17 1-50, inclusive

18 Defendants,

13 CLASS ACTION

00381040

14 Case No.

16 COMPLAINT FOR VIOLATION OF

17 1. CALIFORNIA LABOR CODE

18 2. CALIFORNIA BUSINESS &
PROFESSIONS CODE

20 CLASS ACTION

21 DEMAND FOR JURY TRIAL

24 Plaintiffs Mike Rutti and Gerson Anaya, by their attorneys, brings this action on behalf
25 themselves, all other persons similarly situated and the general public hereby alleges
26 follows:
27
28

///

PARTIES, JURISDICTION AND VENUE

COMPLAINT - 1

Exhibit A

-15-

CIT/Case: NC281643 LEA/DETA;
RECEIPT #: ECH47735012
DATE PAID: 11/27/07 DEPOSITED BY
PAYMENT: \$275.00
RECEIVED:
CHIEF CLERK
CLERK
DEPUTY CLERK
\$70.00
0210

PARTIES, JURISDICTION AND VENUE

1. This class action is brought pursuant to Section 382 of the California Code of Civil Procedure. The monetary damages and restitution sought by Plaintiffs will be established according to proof at trial. The claims of individual class members, including Plaintiffs, are under the \$75,000 jurisdictional threshold for federal court. For example, a class member who was or has been employed for a relatively brief period could never reasonably be expected to receive a recovery of \$75,000 or more. The total damages for the entire case does not exceed \$5,000,000.00. Further there is no federal question at issue, as all the issues related to payment wages alleged herein are based solely on California law and statutes, including the Labor Code, Civil Code, Code of Civil Procedure, and Business and Professions Code.

2. Plaintiffs Mike Rutti and Gerson Anaya are California residents and natural persons and were hourly employees of LOJACK Corporation holding the position of technician. Plaintiffs are informed and believes and on that basis alleges that Defendants LOJACK Corporation ("LOJACK") is and at all times material herein mentioned is a corporation doing business in the State of California and within the County of Los Angeles. LOJACK employs throughout the State of California employees with the title technicians and/or senior technicians, like Plaintiffs, whose responsibility it is to install vehicle recovery systems in vehicles including within Los Angeles County. Accordingly, at least some of the acts complained of herein occurred in Los Angeles County.

3. The names and capacities of defendants sued herein under California Code of Civil Procedure Section 474 as Does 1 through 100, inclusive, are presently not known to Plaintiffs, who therefore sue these Defendants by such fictitious names. Plaintiffs will seek to amend this Complaint and include these Doe Defendants' names and capacities when they are ascertained. Each of the fictitiously named Defendants is responsible in some manner for the

1 conduct alleged herein and for the injuries suffered by Plaintiffs, the members of the Class and
2 the general public.

3
4 4. At all times herein mentioned each of the Defendants sued as DOE was the
5 agent and the employee of each of the remaining Defendants and was at all times acting within
6 the purpose and scope of such agency and employment.

7 5. At all times mentioned in the causes of action alleged herein, each and every
8 Defendant was an agent and/or employee of each and every other Defendant. In doing the
9 things alleged in the causes of action stated herein, each and every Defendant was acting within
10 the course and scope of this agency or employment and was acting with the consent, permission
11 and authorization of each of the remaining Defendants. All actions of Defendants as alleged in
12 the causes of action stated herein were ratified and approved by every other Defendant or their
13 officers or managing agents.

14 **FACTS APPLICABLE TO ALL CLAIMS**

15 Plaintiffs re-allege and incorporates by reference each and every allegation set forth in
16 the preceding paragraphs.

17
18 6. This action alleges that Defendants failed to pay its California employees
19 compensation for work without meal and break periods in violation of California Labor Code
20 Section 226.7 and applicable Industrial Welfare Commission Orders.

21 7. This action seeks relief for un-remedied violations of California law, including,
22 *inter alia*; damages, and/or restitution, as appropriate, to members of the Class, and to victims
23 of the practices at issue, who have not received compensation for labor provided without rest or
24 meal period breaks, who have failed to receive accurate wage statements, who have failed to
25 receive all wages owed to them and who have failed to be indemnified by LOJACK for
26 business expenditures and/or had improper deductions made against their wages for such things
27 as damage to company vehicles.

1 8. Plaintiffs are adequate and proper class representative. Plaintiffs bring this
 2 action in his individual capacity, on behalf of all others similarly situated, and pursuant to
 3 California Business and Professions Code Section 17204, on behalf of the general public.
 4 Plaintiffs were employed by LOJACK within four years from the filing of the complaint and
 5 was paid on an hourly basis. As an employee of LOJACK, Plaintiffs were required to work
 6 without meal and rest period breaks. In addition, they were required to work but were not paid
 7 for all hours worked. Defendants failed to provide Plaintiffs and all other similarly situated
 8 LOJACK, California employees, with off-duty rest and meal period breaks, failed to pay
 9 Plaintiffs and all others similarly situated California employees all wages owed to them and
 10 failed to provide Plaintiffs and all others similarly situated California employees with an
 11 accurate statement of wages. Further, Defendants failed to indemnify Plaintiffs and all others
 12 similarly situated California employees for business expenditures such as tools LOJACK
 13 mandated Plaintiffs and all others similarly situated California employees purchase and made
 14 improper deductions against Plaintiffs and all others similarly situated California employees'
 15 wages for business losses and expenditures.

16 9. Defendants are, and at all relevant times were, employers under applicable
 17 California Industrial Welfare Commission Orders.

18 CLASS ACTION ALLEGATIONS

19 10. Plaintiffs bring this case as a class action pursuant to California Code of Civil
 20 Procedure Section 382. This action seeks relief on behalf of a class of persons in the employ of
 21 Defendants in California between four years preceding the filing of the complaint and the
 22 present:

23 All current and former hourly employees who held the technician and/or senior
 24 technician position at LOJACK in the State of California from April 5, 2002 to the
 25 present ("the Class").

26 11. The Class is sufficiently numerous, since it is estimated to include several
 27 hundred or more LOJACK employees geographically dispersed throughout California, the
 28

1 joinder of whom in one action is impracticable, and the disposition of whose claims in a class
2 action will provide substantial benefits to both the parties and the Court.

3 12. There is a well-defined community of interest in the questions of law and fact
4 involved affecting the parties to be represented. The questions of law and fact common to the
5 Class predominate over questions that may affect individual class members, including but not
6 limited to the following:

- 7 a. Whether LOJACK implemented and engaged in a systematic practice
8 whereby it unlawfully failed to authorize, permit and/or provide hourly
9 employees rest and meal period breaks, respectively, and failed to pay
10 employees for either meal breaks and/or rest breaks worked as required
11 by law;
- 12 b. Whether LOJACK implemented and engaged in a systematic practice
13 whereby it failed to provide accurate wage statements to California
14 hourly employees;
- 15 c. Whether LOJACK implemented and engaged in a systematic practice
16 which violated Labor Code Section 2802 by requiring its employees to
17 purchase tools without indemnifying the hourly employees for the cost of
18 said tools;
- 19 d. Whether the systematic acts and practices of LOJACK as alleged herein
20 whereby LOJACK made deductions from wages for business losses in
21 violation the California Labor Code;
- 22 e. Whether the systematic acts and practices of LOJACK as alleged herein
23 violated, *inter alia*, applicable provisions of the California Labor Code,
24 including but not limited to, Sections 226, 226.7, 512, 1194, 1194.2,
25 1197, 2698, 2802, and applicable Industrial Welfare Commission Orders,
26 and California Business and Professions Code Section 17200, et seq.

27 13. Because Plaintiffs worked on a daily and weekly basis, and were routinely
28 required to work through both meal and rest breaks on a daily basis, for which Plaintiffs were

1 not properly compensated, required to perform work for Defendants for which he was not
2 properly compensated, required by Defendants to purchase tools without indemnification,
3 subjected to improper deductions from wages for business losses and failed to receive timely
4 and accurate wage statements, Plaintiffs are asserting claims that are typical of the claims of the
5 Class.

6
7 14. Plaintiffs will fairly and adequately represent and protect the interests of the
8 Class in that he has no disabling conflict of interest that would be antagonistic to those of the
9 other members of the Class. Plaintiffs has retained counsel, who is competent and experienced
10 in the prosecution of class action wage and hour violations.

11
12 15. Because Plaintiffs and the members of the Class have all similarly suffered
13 irreparable harm and damages as a result of LOJACK's unlawful and continuously wrongful
14 conduct, including but not limited to LOJACK's systematic failure to provide for rest and meal
15 period breaks, systematic failure to pay for meal and break periods worked, systemic failure to
16 indemnify for business expenditures, systemic improper deductions from wages for business
17 losses and systemic failure to pay all wages owed for all hours worked, class treatment is
18 especially appropriate. Because the hours worked and employment circumstances by LOJACK
19 employees and Class members follow common patterns, all of which are reflected in the
20 records possessed by LOJACK, this action will provide substantial benefits to both. Absent this
21 action, LOJACK's unlawful conduct will continue un-remedied and uncorrected.

22 16. Class action treatment is superior to any other available alternatives to ensure
23 that fair and efficient adjudication of the controversy alleged herein. Such treatment will permit
24 a larger number of similarly situated persons to prosecute their common claims in a single
25 forum simultaneously, efficiently and without the duplication of efforts and expense that
26 numerous individuals would entail. No difficulties are likely to be encountered in the
27 management of this class action that would preclude its maintenance as a class action, and no
28 superior alternative exists for the fair and efficient adjudication of this controversy. The Class
members are readily identifiable from Defendants' records.

17. Defendants' wrongful and unlawful conduct has been widespread, recurring and uniform at their California stores. Defendants knew or should have known that their hourly employees, including Plaintiffs and the members of the Class, were not being provided with their earned rest and meal breaks as required by law, were not being paid all wages, owed, were not being indemnified for business expenditures as required under the labor code and were making improper deductions against wages. Absent a class action, Defendants will likely continue their wrongdoing resulting in further damage to Plaintiffs and members of the Class.

18. The filing of the lawsuit entitled Rutti v. Lojack Corporation, which was pending in the Federal District Court, Central District of California Case No. SA CV06-0350, has tolled the statute of limitations on Plaintiffs' claim. Therefore, Plaintiffs are entitled to seek all unpaid wages, penalties and other compensation owed to him by Defendants for work performed from the period of April 5, 2002, to the present. The federal action involved both Fair Labor Standards Act (F.L.S.A.) claims and California Labor Code claims. The District Court granted summary judgment on the "off the clock" claims. All that remained were the claims alleged in this lawsuit. The District Court dismissed those claims without prejudice based on lack of subject matter jurisdiction over these California state claims.

FIRST CAUSE OF ACTION

(Failure To Provide Meal Period Breaks And Accurate Wage Statements Pursuant To IWC Wage Orders, California Labor Code Sections 226, 226.7, 512)

Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

19. Labor Code Section 226.7(a) provides, "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

20. Industrial Welfare Commission Order No. 7-2001(11)(c) provides in relevant part, "Unless the employees is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

1 21. Labor Code Section 512, which provides in relevant part:

2 Meal periods

3 An employer may not employ an employee for a work period of
4 more than five hours per day without providing the employee with a
5 meal period of not less than 30 minutes, except that if the total work
6 period per day of the employee is no more than six hours, the meal
7 period may be waived by mutual consent of both the employer and
8 employee. An employer may not employ an employee for a work
9 period of more than 10 hours per day without providing the
10 employee with a second meal period of not less than 30 minutes,
11 except that if the total hours worked is no more than 12 hours, the
12 second meal period may be waived by mutual consent of the
13 employer and the employee only if the first meal period was not
14 waived.

15 22. During all relevant periods, Defendants illegally and unlawfully required
16 Plaintiffs and members of the Class to work through meal periods.

17 23. During all relevant periods, both the California Labor Code and the pertinent
18 wage orders required that Plaintiffs and Class members be compensated for the meal periods
19 for which LOJACK required Plaintiffs and Class members to work. LOJACK failed to
20 compensate Plaintiffs and Class members for meal periods worked as required by law.
21 Plaintiffs and Class members are entitled to recover their unpaid compensation arising there
22 from.

23 24. By unlawfully requiring Plaintiffs and Class members to work without meal
24 breaks and in failing to properly compensate Plaintiffs and Class members for the meal periods
25 they worked as alleged herein, LOJACK acted in willful, oppressive and conscious disregard of
26 Plaintiffs and Class members' statutory and regulatory right to meal periods and compensation.

27 25. Plaintiffs and the other members of the Class are therefore entitled to the relief
28 requested below.

1 26. As a result of the unlawful acts of Defendants, Plaintiffs and the Class members
2 have been deprived of meal periods, and are entitled to recovery under Labor Code Section
3 226.7(b) in the amount of one addition hour of pay at the employee's regular rate of
4 compensation for each work day that a meal period was not provided.

5 27. Defendants have acted with malice, oppression, and/or in conscious disregard
6 for the legal rights of Plaintiffs and the Class members by failing to provide them with their full
7 meal periods as required by California law. Defendants' actions are also in blatant violation of
8 California law and public policy concerning the provision of meal breaks. Punitive damages are
9 therefore warranted to deter Defendants' wrongful and egregious conduct.

10 11 12 SECOND CAUSE OF ACTION

13 (Failure To Provide Rest Period Breaks And Accurate Wage Statements 14 Pursuant To IWC Wage Orders, California Labor Code Sections 226, 226.7)

15 28. Plaintiffs re-alleges and incorporates by reference each and every allegation set
16 forth in the preceding paragraphs.

17 29. Labor Code Section 226.7(a) provides, "No employer shall require any
18 employee to work during any meal or rest period mandated by an applicable order of the
19 Industrial Welfare Commission."

20 30. Industrial Welfare Commission Order No. 7-2001 (12)(A) authorizes employees
21 to take rest periods based on the total hours worked daily at the rate of ten minutes rest per four
22 hours or major fraction thereof. During all relevant periods, Defendants illegally and
23 unlawfully failed to authorize or permit Plaintiffs and Class members to take off duty rest
24 breaks as required by law.

25 31. During all relevant periods, both the California Labor Code and the pertinent
26 wage orders required that Plaintiffs and Class members be compensated for the rest periods for
27 which LOJACK required Plaintiffs and Class members to work. LOJACK failed to compensate
28

1 Plaintiffs and Class members for rest periods worked as required by law. Plaintiffs and Class
2 members are entitled to recover their unpaid compensation arising there from.

3 32. By unlawfully requiring Plaintiffs and Class members to work without rest
4 breaks and in failing to properly compensate Plaintiffs and Class members for the rest periods
5 they worked as alleged herein, LOJACK acted in willful, oppressive and conscious disregard of
6 Plaintiffs and Class members' statutory and regulatory right to rest periods and compensation.

7 33. As a result of the unlawful acts of Defendants, Plaintiffs and the Class members
8 have been deprived of rest breaks, and are entitled to recovery under Labor Code Section
9 226.7(b) in the amount of one addition hour of pay at the employee's regular rate of
10 compensation for each work day that a rest period was not provided.

11 34. Defendants have acted with malice, oppression, and/or in conscious disregard
12 for the legal rights of Plaintiffs and the members of the Class by failing to provide them with
13 their full rest periods as required by California law. Defendants' actions are also in blatant
14 violation of California law and public policy concerning the provision of meal breaks. Punitive
15 damages are therefore warranted to deter Defendants' wrongful and egregious conduct.

16
17 35. Plaintiffs and the other members of the class are therefore entitled to the relief
18 requested below.

19 THIRD CAUSE OF ACTION

20 (Failure to Indemnify Employees In 21 Violation of Labor Code Section 2802)

22 Plaintiffs re-allege and incorporate by reference each and every allegation set forth in
23 the preceding paragraphs.

24 36. The Class Period for this cause of action is three years (April, 2003 to the
25 present).

26 37. Labor Code Section 2802 provides
27
28 ///

1 (a) An employer shall indemnify his or her employee for all necessary expenditures or
 2 losses incurred by the employee in direct consequences of the discharge of his or her
 3 duties, or his or her obedience to the directions of the employer, even though
 4 unlawful, unless the employee, at the time of obeying the directions, believed them to
 5 be unlawful.

6 38. As alleged herein, Defendants required Plaintiffs and the Class members to
 7 make expenditures for which Defendants failed to indemnify. Further, Defendants required
 8 Plaintiffs and the Class Members to incur losses without indemnification, instead Defendants
 9 made deductions against Plaintiffs and the Class Members' wages. By these actions,
 10 Defendants violated Labor Code Section 2802 and is liable to Plaintiffs and the class.

11 39. As a result of the unlawful acts of Defendants, Plaintiffs and the Class members
 12 have been deprived of compensation in amounts to be determined at trial, and are entitled to
 13 recovery of such amounts, including interest thereon, attorneys' fees, costs, and any other
 14 damages as set forth under California Law.

15 FOURTH CAUSE OF ACTION

16 (Failure to Pay Minimum Wage 17 Violation of Labor Code Sections 1194, 1194.2, 1197)

18 Plaintiffs re-allege and incorporate by reference each and every allegation set forth in
 19 the preceding paragraphs.

20 40. The Class Period for this cause of action is three years (April, 2003 to the
 21 present).

22 41. Labor Code Section 1197 provides, "the minimum wage for employees fixed by
 23 the commission is the minimum wage to be paid to employees, and the payment of a less wage
 24 than the minimum so fixed is unlawful."

25 42. LABOR CODE SECTION 1194 PROVIDES IN RELEVANT PART THAT ANY EMPLOYEE
 26 RECEIVING LESS THAN THE LEGAL MINIMUM WAGE APPLICABLE TO THE EMPLOYEE
 27 IS ENTITLED TO RECOVER IN A CIVIL ACTION THE UNPAID BALANCE OF THE FULL

1 AMOUNT OF THIS MINIMUM WAGE, INCLUDING INTEREST THEREON, REASONABLE
2 ATTORNEYS' FEES, AND COSTS OF SUIT.

3 43. Labor Code Section 1194.2 provides in relevant part that: "In any action under
4 ... Section 1194 to recover wages because of a payment of a wage less than the minimum wage
5 fixed by an order of the commission, an employee shall be entitled to recover liquidated
6 damages in an amount equal to the wages unlawfully unpaid and interest thereon."
7

8 44. As alleged herein, Defendants required Plaintiffs and the Class members to work
9 without compensating them for all hours worked and denied Plaintiffs and the Class members'
10 meal and/or rest breaks in violation of California law. By these actions, Defendants violated
11 Labor Section 1197 and is liable to Plaintiffs and the class.

12 45. As a result of the unlawful acts of Defendants, Plaintiffs and the Class members
13 have been deprived of compensation in amounts to be determined at trial, and are entitled to
14 recovery of such amounts, including interest thereon, attorneys' fees, costs, and any other
15 damages as set forth under California Law.
16

17 FIFTH CAUSE OF ACTION

18 (Failure to Make Payment Within the Required Time;
19 California Labor Code Sections 201, 202, 226)

20 Plaintiffs re-alleges and incorporates by reference each and every allegation set forth in
21 the preceding paragraphs.
22

23 46. California Labor Code Section 201 provides in relevant part, "[i]f an employer
24 discharges an employee, the wages earned and unpaid at the time of discharge are due and
25 payable immediately."
26

27 47. California Labor Code Section 202 provides in relevant part, "[i]f an employee
28 not having a written contract for a definite period quits his or her employment, his or her wages
29

1 shall become due and payable not later than 72 hours thereafter, unless the employee has given
2 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to
3 his or her wages at the time of quitting."

4
5 48. As alleged herein, Defendants failed to pay earned wages to Plaintiffs and the
6 Class who are former employees of Defendants at the time they became due and payable. Thus,
7 Defendants violated Cal. Labor Code Sections 201 and 202.

8
9
10 **SIXTH CAUSE OF ACTION**

11 **(Unlawful, Unfair And Fraudulent Business Practices Pursuant**
12 **To Business And Professions Code Section 17200, et seq.)**

13 Plaintiffs re-alleges and incorporates by reference each and every allegation set forth in
14 the preceding paragraphs.

15 49. Business and Professions Code Section 17200, et seq. prohibits acts of unfair
16 competition, which shall mean and include any "unlawful business act or practice."

17
18 50. Labor Code Section 90.5(a) states it is the public policy of California to enforce
19 vigorously minimum standards in order to ensure employees are not required to work under
20 substandard and unlawful conditions, and to protect employers who comply with the law from
21 those who attempt to gain competitive advantage at the expense of their workers by failing to
22 comply with minimum labor standards.

23
24 51. The policies, acts and practices heretofore described were and are an unlawful
25 business acts or practices because LOJACK's failure to provide rest and meal period breaks,
26 failure to pay compensation for work without rest and meal period breaks, and failure to
27 provide accurate and timely wage statements violates applicable Labor Code sections,
28 including but not limited to Labor Code Sections 226, 226.7, 512, 1194, 1194.2, 1197, 1198,

1 2802, applicable Industrial Welfare Commission Wage Orders, the Labor Code Private
 2 Attorney General Act of 2004, Labor Code Section 2698 *et seq.*, and other provisions of
 3 California common and/or statutory law. Plaintiffs reserves the right to allege additional
 4 statutory and common law violations by Defendants. Such conduct is ongoing to this date.
 5

6 52. Defendants engaged in unfair competition in violation of Business and
 7 Professions Code Section 17200, *et seq.*, by violating, *inter alia*, each of the following:

- 8 a. Causes of Action One through Six stated above;
- 9 b. Cal. Labor Code Sections 201, 202;
- 10 c. Cal. Labor Code Sections 226, 226.7;
- 11 d. Cal. Labor Code Section 512;
- 12 e. Cal. Labor Code Section 1194 *et seq.*;
- 13 f. Cal. Labor Code Sections 1197, 1998,
- 14 g. Cal. Labor Code Section 2802; and
- 15 h. California IWC Orders Nos. 7-1997 *et seq.* through 2-2001 *et*

16 *seq.*

17
 18 53. Defendants' course of conduct, act and practice in violation of the California
 19 laws mentioned in each paragraph above constitute separate and independent violations of
 20 Section 17200 *et seq.* of the California Business and Professions Code.

21 54. The policies, acts or practices described herein were and are an unfair business
 22 act or practice because any justifications for LOJACK's illegal and wrongful conduct were and
 23 are vastly outweighed by the harm such conduct caused Plaintiffs, the class members, and the
 24 members of the general public. Such conduct is ongoing to this date.

25 55. The harm to Plaintiffs and the Class in being wrongfully denied earned wages
 26 and meal and rest breaks outweighs the utility if any, of Defendants' policies/practices, and
 27 therefore, Defendants' actions described herein constitute an unfair business practice or act
 28 within the meaning of Business and Professions Code Section 17200.

Exhibit A
-29-

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a. A declaratory judgment that Defendants have violated Labor Code Sections 226.7, 512, and the IWC Order Nos. 7-1997 *et seq.* through 7-2001 *et seq.*;

b. Pursuant to Labor Code Section 226.7, an award to Plaintiffs and the Class of an additional hour of pay at the rate of the employee's regular rate of compensate for each work day that a meal and/or rest break was not provided;

c. Pursuant to Labor Code Section 218.6, an award of all accrued interest from the date that the wages were due and payable at the interest rate specified in subdivision (b) or Section 3289 of the Civil Code;

d. An aware to Plaintiffs and the Class members of reasonable attorneys' fees and costs pursuant to Labor Code Section 218.5; and

e. For punitive damages.

3. For the Third Cause of Action:

a. A declaratory judgment that Defendants have violated Labor Code Sections 1194, 1194.2 and 1197;

b. An aware to Plaintiffs and the Class of damages for the balance of unpaid compensation, including interest thereon and penalties subject to proof;

c. An award to Plaintiffs and the Class of reasonable attorney fees and costs pursuant to Labor Code Section 1194; and

d. Pursuant to Labor Code Section 218.6, an award of all accrued interest from the date that the wages were due and payable at the interest rate specified in subdivision (b) or Section 3289 of the Civil Code.

4. For the Fourth Cause of Action:

- 1 a. A declaratory judgment that Defendants have violated Labor
- 2 Code Sections 201 and 202;
- 3 b. An award to Plaintiffs and the Class who are former hourly-
- 4 paid employees of continuing wages as a penalty from the
- 5 due date thereof at the same rate until paid or until this action
- 6 was commenced; but for no more than 30 days; and
- 7 c. Pursuant to Labor Code Section 226, an award to Plaintiffs
- 8 and the Class of actual damages as well as an award of costs
- 9 and reasonable attorneys' fees.

10 5. For the Fifth Cause of Action:

- 11 a. A declaratory judgment that Defendants have violated Labor
- 12 Code Section 2802;
- 13 b. An award to Plaintiffs and the Class who are former hourly-
- 14 paid employees of indemnification by Defendant for all
- 15 business expenditures and losses incurred; and
- 16 c. Pursuant to Labor Code Section 2802, an award to Plaintiffs
- 17 and the Class of actual damages as well as an award of costs
- 18 and reasonable attorneys' fees.

19 5. For the Sixth Cause of Action:

- 20 a. Ordering Defendants, their agents, servants and employees,
- 21 and all persons acting, directly or indirectly, in concert with
- 22 them, to restore and disgorge all funds to each member of the
- 23 Class acquired by means of any act or practice declared by this
- 24 Court to be unlawful, unfair or fraudulent and therefore constitute
- 25 unfair competition under Section 17200 *et. seq.* of the Business
- 26 and Professions Code;
- 27 b. For injunctive relief pursuant to Business and Professions
- 28 Code Section 17203, consisting of *inter alia*: (1) a declaration

1 that Defendants have engaged in unlawful and unfair and
 2 fraudulent business acts and practices in violation of California
 3 Business and Professions Code Section 17200 *et. seq.*; (2) a
 4 preliminary and/or permanent injunction enjoining Defendants
 5 and their respective successors, agents, servants, officers,
 6 directors, employees and all persons acting in concert with them
 7 from pursuing the policies, acts and practices complained of
 8 herein and prohibiting Defendants from continuing such acts of
 9 unfair and illegal business acts and practices; and

10 c. Restitution, including, but not limited to, the relief permitted
 11 by the California IWC Order Nos. 7-1997 through 7-2001 *et. seq.*

12 6. For the Seventh Cause of Action:

13 a. Civil penalties pursuant to California Labor Code Sections
 14 226, 226.7, 512, 1194, 1194.2, 1197, and 2698.

15 7. For an award of attorneys' fees and costs;

16 8. Pre- and post-judgment interest; and

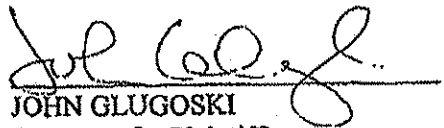
17 9. Such other and further relief as the Court deems just and proper.

18 **JURY DEMAND**

19 Plaintiffs hereby demands a trial by jury.

20
 21
 22 DATED: November 9, 2007

RIGHETTI LAW FIRM, P.C.

23
 24
 25
 26 
 27 JOHN GLUGOSKI
 28 Attorneys for Plaintiffs
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 31
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